

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

MM Docket No. 96-70

UNDER HIS DIRECTION, INC.)

Order to Show Cause Why the)
License for Station KUHD(AM))
Port Neches, Texas Should)
Not Be Revoked)

To: Administrative Law Judge)
Edward Luton)

RECEIVED

JUN 10 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

RESPONSE TO COMMENTS OF MASS MEDIA BUREAU

Vision Latina Broadcasting, Inc. ("Vision") respectfully submits this Response to the "Comments on Reply to Opposition to Petition for Leave to Intervene" ("Comments") filed by the Mass Media Bureau ("Bureau") on May 29, 1996.¹ The Bureau continues to oppose Vision's intervention in this proceeding, claiming - - without citation of precedent or any other support - - that despite its contracts to acquire the assets of the station and upon FCC consent to acquire the station license, Vision lacks a "cognizable interest" in the KUHD license.

As reported in the pending assignment application, Vision has entered into an agreement to acquire the KUHD license from Under His Directions, Inc. ("UHD"), the current KUHD licensee. A copy of the agreement between the parties is attached as an exhibit to the assignment application. Prior to entering that agreement, Vision entered into an agreement to purchase the KUHD tower site from the person who owns the land, and an agreement to acquire the

¹ This Response is timely filed in accord with Section 1.45 of the Commission's Rules. 47 C.F.R. § 1.45.

No. of Copies rec'd OTG
List A B C D E

station's equipment from the person who has possession of the equipment following UHDI's financial difficulties which required the station to request FCC authorization to go "dark." Vision has invested substantial time and money in its pursuit of the assets and license to operate KUHD. Vision now has contractual relations to acquire the assets and the license of the station, and those contractual relations give Vision standing to participate in the KUHD revocation proceeding.

The Supreme Court has held that standing requires: (1) an injury in fact (i.e., an invasion of a legally protected interest which is concrete and particularized and actual and imminent), (2) that the injury be traceable to the challenged action and (3) that the injury will be redressed by a favorable decision in the proceeding where standing is sought. Lujan v. Defenders of Wildlife, 504 US 555, 559-561, 112 S.Ct. 2130 (1992). In other words, for Vision to establish standing, it must show "a palpable injury that is fairly traceable to the Commission's conduct and redressable by the relief requested." Telephone and Data Systems, Inc. v. FCC, 19 F.3d 42, 74 RR2d 1327, 1330 (D.C. Cir. 1994).²

Vision will suffer an actual, concrete and imminent injury in fact in the event the KUHD license is revoked. Vision has invested time and money to enter into contractual relations with the KUHD

² As the Bureau itself agrees at page 2 of its Comments in TDS v. FCC, the court held that the loss of the contractual right constituted commercial injury sufficient to invoke standing. Vision agrees. It is the loss of Vision's contractual right to acquire the KUHD license which therefore confers standing on Vision.

tower site owner to acquire the site, with the person holding the station's assets (i.e., studio and transmitter equipment) and with the licensee to acquire the assets and license of the station. These rights have commercial value and the loss of a valuable contractual interest concerning a licensee is sufficient to provide a party with standing. See TDS, supra, Granik v. FCC, 234 F.2d 682, 11 RR 2185 (D.C. Cir. 1956).³

Patently, the revocation of KUHD's license is the action which Vision seeks standing to challenge and it is the possible revocation of the KUHD license which directly threatens Vision's contractual rights. The revocation proceeding is a Commission action, thus Vision's injury is fairly traceable to Commission conduct and would be cured by a favorable Commission decision (i.e., a decision not to revoke the KUHD license).


Vision's contracts to acquire the assets and license of KUHD are sufficient grounds to grant Vision standing in the KUHD revocation proceeding. In addition, Vision has personal knowledge of facts that will assist in the resolution of this case. After reaching an "agreement" with UHDI, Vision independently negotiated with the site owner and asset holder. Vision has prepared a budget, tested the equipment and provided a timetable for returning

³ It is not the filing of the assignment application that creates the interest sufficient to give Vision standing. Vision gains standing to intervene from its contractual right to acquire the station's license as against all (pending FCC consent), and its contractual right to acquire all of the other station assets (excluding the license) without the consent of the Commission. These contractual rights have sufficient commercial value to confer standing on Vision.

the station to the air. This information is essential and will assist the Commission in resolving the critical issue in this proceeding: whether and when KUHD will returned to the air and again provide Port Neches with its only local aural service.

WHEREFORE, Vision respectfully requests that pursuant to Section 1.223 of the Rules (47 C.F.R. § 1.223) it be granted leave to intervene in the above-captioned proceeding.

Respectfully submitted,


Eric S. Kravetz


Scott C. Cinnamon
Its Attorneys

Brown Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
(202) 887-0600

June 10, 1996

\scc\vision.res

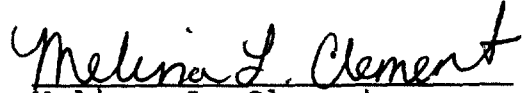
CERTIFICATE OF SERVICE

I, Melissa L. Clement, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, do hereby certify that I caused a copy of the foregoing "**Response to Comments on Reply to Opposition to Petition for Leave to Intervene**" to be sent via first class U.S. mail, postage prepaid or hand delivered, this 10th day of June, 1996 to each of the following:

Mark Peterson, President
Under His Direction, Inc.
Route 6, Box 979K
Beaumont, TX 77705

* Robert Zauner, Esq.
Hearing Branch
Audio Services Division
Federal Communications Commission
2025 M Street, Room 7217
Washington, D.C. 20554

* Honorable Edward Luton
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 225
Washington, D.C. 20554


Melissa L. Clement

* Hand Delivery